

2 VAC 15-20-40. Producers' license and base; establishment.

This section shall apply to all established marketing areas and the combination of all markets shall be considered as a single unit for the purpose of this section.

- A.
 1. Total milk commission base pounds shall be established in relation to the total average monthly pounds of Class I sales. Effective March 1 of each year the total base pounds established shall not exceed 108% of the average monthly pounds of Class I sales for the preceding calendar year, excluding the months of June, July, and August.
 2. The total milk commission base pounds established for the months of June, July and August shall be determined by multiplying the pounds of total base computed pursuant to subdivision 1 above by a percentage; that percentage shall be determined by dividing the average monthly Class I sales for the months of June, July and August of the previous year by the average monthly pounds of Class I sales for the previous calendar year, excluding the months of June, July and August.
 3. The total pounds of established base shall be issued equitably to producers licensed by the commission.
 4. Only one license and base shall be issued to the owner or owners of each producing unit.
 5. Base shall not be issued to any producer operating as a producer-distributor. Producer-distributors that have been in continuous operation for 10 or more consecutive years who discontinue distributing milk and continue as producers shall have a base established and issued to them by the commission on an equitable basis with all other producers.

- B.
1. New producers shall be licensed and have bases established in accordance with the provisions of this chapter provided there is a need for additional milk for Class I sales. On or before ~~January 1~~ February 1 of each year, the commission shall give written notice to all cooperative associations with baseholding producers of the need for additional base.
 2. Applications for producers' license and base shall be filed with the commission each year between ~~January 1~~ February 1 and ~~February 1~~ February 15 on forms provided by the commission. Applications will not be accepted prior to ~~January 1~~ February 1 or subsequent to ~~February 1~~ February 15 of each year. Bases shall be offered to applicants in the order of lots drawn by the commission at the first meeting held subsequent to February 1 of each year. After the establishment and issuance of new bases is completed, all remaining applications and all unused lots shall be destroyed.
 3. Applicants who agree to accept a base shall be licensed and entered into a one month base-establishing period by the commission, after an investigation and hearing before the commission indicates that the applicant will provide a new source of Grade "A" milk for commission markets.
 4. A new producer shall have a base issued at the conclusion of the base-establishing period to be effective on the first day of said base-establishing period. Such base shall be the lesser of the following:
 - a. Deliveries during the base-establishing period, or
 - b. The pounds of base specified in accordance with subdivision C 2 d of this section.

5. Bases issued in accordance with the provisions of this subsection shall not be transferable or consignable during the first 36 months after being issued, except in the event of total physical or mental disability or death of the baseholder.
 6. Producers who are members of a cooperative association may consign their total base pounds to their cooperative association provided they have been licensed baseholders for three consecutive years immediately prior to the effective date of the consignment. Producers desiring to consign their base pounds to their cooperative association shall notify the commission in writing not less than 15 days nor more than 60 days prior to the effective date of such consignment.
 7. Cooperative associations that have been designated as the consignee of the member's base shall notify the commission in writing of the name(s) of one or more of its members to whom a consigned base shall be reissued within 30 days subsequent to the cessation of production by the consignor.
 8. Cooperative associations may, subject to the commission's written approval, relinquish their total consignment of all members' base or the total base consignment of individual members.
- C.
1. The total pounds of base issued to producers shall be adjusted (including base loss adjustments) effective March 1 of each year. Bases issued to existing producers shall be adjusted with reference to the average deliveries of merchantable milk which meets the requirements of health authorities having jurisdiction during the base-adjusting period, which shall consist of the months of September, October, November and December of the preceding year. Said deliveries shall only include milk from a producer's own licensed production unit.
 2. Bases issued to producers shall be adjusted as follows:
 - a. If the average monthly delivery of a producer during the base-adjusting period is less than his base existing on the last day of the base-adjusting

period, his new base shall be his average monthly deliveries during the base-adjusting period.

- b. If the average monthly deliveries of a producer during the current base-adjusting period is in excess of his base existing on the last day of the base-adjusting period, such producer shall be eligible for additional base as follows:

- (1) Any base loss sustained by a producer during the preceding base-adjusting period shall be restored to that producer to the extent that his average monthly deliveries during the current base-adjusting period exceeds his base existing on the last day of the base-adjusting period, however, in no event is the base restored to exceed the base loss.

- (2) A producer (including those who recovered base loss) shall be eligible for additional base in proportion to his average deliveries during the base-adjusting period in excess of his base existing on the last day of the base-adjusting period, plus any loss recovered under subdivision (1) above. Average deliveries in excess of 125% of the producer's base existing on the last day of the base-adjusting period, plus any base loss recovered under subdivision (1) above shall not be used in determining such producer's eligibility for additional base.

- c. Whenever all bases are reduced by commission action, no base shall be issued to new producers until the total base reduction sustained by currently licensed baseholding producers has been restored.

- d. The following method shall be used to allocate base increases:

- (1) Fifty percent rounded to the nearest unit of 30,000 pounds to be allocated to new producers. The resulting amount shall be offered

in units not to exceed 30,000 pounds per producer to new producers in accordance with the provisions of subdivision B of this section. In the event that new producers do not absorb the entire amount offered under this provision the remainder thereof shall be allocated to producers under subdivision (2) following.

(2) The remainder of the base increase shall be allocated to existing baseholding producers in accordance with the provisions of subdivision 2 b (2) of this subsection.

- D. 1. Base shall be assigned to licensed general distributors and reassigned when necessary from one distributor to another to equitably apportion base among distributors according to each distributor's Class I sales and in accordance with the number of days in each calendar month.
- a. For purposes of assignment of base to distributors the bases of all members of a cooperative association shall be aggregated and such base assigned in such increments as necessary when application from the cooperative association concerned to do so is approved by the commission.
- b. Base of individual producers who are not members of cooperative associations, or base of members of cooperative associations, when subdivision D 1 a above is not followed, shall be assigned in its entirety.
2. Base assigned to a distributor shall be reassigned to another distributor only upon written notification to all persons concerned that such reassignment has been directed by the commission.
3. Distributors shall not accept producer milk until the base which it represents is assigned to them by the commission and they are so notified in writing.

4. The producers with bases assigned to licensed distributors who are fully regulated by a Federal Milk Marketing Order shall be paid a price not less than the applicable uniform price of the Federal Milk Marketing Order under which the distributor is fully regulated provided, however, that if the appropriate market Class I price established by the commission exceeds the Class I price of the applicable Federal Milk Marketing Order then the assigned baseholding producers, or their agents, shall be paid an additional amount equal to the Class I differential existing between the appropriate Federal Milk Marketing Order Class I price and the appropriate State Milk Commission market Class I price, multiplied by the hundredweight of Class I sales allocated in accordance with the provisions of 2 VAC 15-20-80.
5. For base assignment purposes only the following methods shall be used to adjust the base assignments in accordance with the number of days in each calendar month:
 - a. The total base pounds assigned to all licensed general distributors during each month of the nine month period (September through May) shall be an amount determined by multiplying the number of days in the calendar month by a number calculated in accordance with the following procedure: Multiply by nine the total pounds of monthly base established for the nine month period (September through May) and divide the product by the total number of days in the nine month period (September through May).
 - b. The total base pounds assigned to all licensed general distributors during each month of the three month period (June, July and August) shall be an amount determined by multiplying the number of days in the calendar month by a number calculated in accordance with the following procedure: Multiply by three the total pounds of monthly base established for the three month period (June, July and August) and divide the product by the total number of days in the three month period (June, July and August).

Transfers of base issued to licensed producers.

1. The total unconsigned base of a producer may, upon written request to the office of and approval by the commission, be transferred to existing unconsigned baseholding producers or to prospective producers if such persons have met the requirements of the health authorities having jurisdiction provided:
 - a. That the entire base of the transferring producer or his entire part thereof, is transferred at the same time,
 - b. That the producer license of the transferring producer shall be cancelled,
 - c. That any producer who transfers his entire base from a producing unit to other baseholding producers or prospective baseholding producers shall be ineligible during the next twelve months to hold a Milk Commission license or base on the producing unit from which the base was transferred,
 - d. That the written request shall include the exact pounds to be transferred to each existing baseholder or each prospective producer with the total pounds to be transferred being equal to the total existing base of the transferring producer, and,
 - e. For all months except February, total base transfer requests received from the first through the 15th day of a month shall become effective on the 16th day of that month. Total base transfer requests received from the 16th day of a month through the last day of that month shall become effective on the first day of the following month. Total base transfer requests received from the first through the last day of February shall become effective on the first day of March.

2. Any portion less than a producer's total unconsigned base may upon written request to the office of and approval by the commission be transferred to existing unconsigned baseholding producers or to prospective baseholding producers if such persons have met the requirements of the health authorities having jurisdiction, provided:
 - a. That no partial base transfers shall be permitted during the base-adjusting period,
 - b. For all months except February and the base-adjusting period, partial base transfer requests received from the first through the 15th day of a month shall become effective on the 16th day of the month. All partial base transfer requests received from the 16th day of a month through the last day of that month shall become effective on the first day of the following month. Partial base transfer requests received from the first through the last day of February shall become effective on the first day of March, and,
 - c. That any producer who reduces his base by a partial base transfer shall be ineligible at anytime during the next 12 months to increase his base by a base transfer.
3. A producer holding a base or a part thereof may, subject to the approval of the commission, retain same when he moves his entire herd or his entire part thereof, from one farm to another.
4. For base adjustment purposes all base transfers occurring between September 1 and March 1, the transferee shall be credited with the lesser of:
 - a. An amount of monthly production equal to the number of pounds of base transferred, or,
 - b. The prorata share of the average monthly production during the base-adjusting period of the transferor.

5. For all base transfers subject to a March 1 base reduction resulting from deficient production of the transferror during the base-adjusting period, the transferror shall notify all transferees of the pounds of their base transfer subject to the reduction when a base transfer approval is requested.
 6. All Milk Commission base is subject to the following restrictions:
 - a. Only Grade "A" producers may own or transfer commission base.
 - b. Only Grade "A" producers with unconsigned base, or prospective Grade "A" producers, may acquire base by transfer.
 - c. All base transfers and acquisitions are subject to the commission's approval which may require the producer or division manager of the producer's cooperative association to submit an affidavit providing information pertinent to the transfer or acquisition.
 7. Cooperative associations that have been designated as the consignee of a member's base may transfer any part of a member's consigned base to another member or members of the association from December 1 through August 16 of each year. Total base transfers of consigned base shall be made in accordance with subdivision B 7 of this chapter.
- F. Cancellation of base issued to licensed producers:
1. The commission may suspend or revoke a base or license, or both, held by a producer upon due notice to the producer and after a hearing, when the commission is convinced from the evidence that such baseholding producer has knowingly violated any of the provisions of this chapter.

2. The license and base of a producer shall be cancelled if he fails for a period of 30 or more consecutive days to make delivery of milk that meets the requirements of the health authorities having jurisdiction and does not during that period provide the commission, in writing, a reasonable explanation for such failure and indicate a present ability and willingness to continue to deliver such milk.
 3. During any delivery period if a cooperative association that has aggregated its members' bases in accordance with subdivision D 1 a of this chapter, fails for a period of 30 or more consecutive days to make delivery of milk that meets the requirements of the health authorities having jurisdiction and does not during that period notify the commission of its reasons for such failure, the total aggregate base of that association shall be reduced by the amount of base assigned to the distributor to which the association failed to make delivery and the base of each baseholding member of that association shall be reduced by his prorata share of the total reduction.
 4. The license and base of a producer shall be cancelled prior to granting him a distributor's license.
- G. Commission Order No. Twelve.

No licensed general distributor shall be required to accept an assignment of base for class I sales of UHT products sold in commission markets.